IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

Cr.A.No.699 of 2000

Date of Decision : 25th October, 2007.

State of H.P. …Appellant.

Versus:

Yashbir Singh. …Respondent.

Coram:
The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General.

For Respondent. Mr. Rajiv Jiwan, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 31st August, 2000 passed by the Chief Judicial Magistrate, Bilaspur, District Bilaspur, in Criminal Case No. 248-1 of 1998 titled as State Vs. Yashbir Singh, acquitting the accused of the charged offence.

As per the case of the prosecution, complainant, Pawan Kumar (PW-1) was having his tailoring shop in the main market of Bilaspur town, H.P. and the accused had given his clothes for stitching. On 7.7.1998 at about 7.45 P.M the accused had gone to purchase vegetables from the market when he

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

inquired from the complainant, whether his clothes had been stitched or not when the accused told that one shirt had been stitched at that the accused abused him and gave blows with fist and kicks. The occurrence was witnessed by Balak Ram, Mehar Singh and Ramesh Chand. Matter was reported to the police and FIR (Ext. PW-7/A) was registered with Police Station, Bilaspur Sadar, under Section 32 and 504 IPC. The complainant was got medically examined through Dr. D.K.Arora (PW-6) and Dr. D.R.Sehgal (PW-8) who prepared the MLCs (Ext.PW-6/A and Ext.PW-8/A) and found that the complainant had suffered grievous injury.

With the completion of the investigation challan was presented in the Court for trial. Charges against the accused were framed under Section 325 and 504 IPC. The accused did not plead guilty and claimed trial.

In order to prove its case the prosecution examined 8 witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded. The Court below held that the prosecution had failed to prove the case beyond reasonable doubt and consequently acquitted the accused of the charged offences for the reasons that the testimony of PW-1 and his brother PW-4 did not inspire confidence in view of the fact that their version were not corroborated by the independent witnesses, one of whom did not even support the case of the prosecution.

Out of 8 witnesses ASI Mast Ram (PW-7) is a police official and Dr.D.K.Arora (PW-6) and Dr. D.R. Sehgal (PW-8) are witnesses who have medically examined the complainant. Kuldeep Singh (PW-5), who was spot witness has not supported the case of the prosecution and in spite of cross examination by the Public Prosecutor nothing incriminating could be deduced from his statement. Statement of Ramesh Chand, (PW-2), is also not of much significance for the simple reason that even he has admitted in his cross examination that incident did not take in his presence. Similarly, Satya Devi, (PW-3), is not a spot witness as she has also admitted that she was not accompanying her husband, PW-1, as she had gone alone to fetch vegetables from the market. The incident did not take place in her presence. Therefore, the statements of complainant Pawan Kumar, (PW-1) and Gurbax, (PW-4) need to be examined.

Complainant, (PW-1), no doubt has narrated the incident as per the prosecution story but he has admitted in his cross-examination that the quarrel took place for about 15 to 20 minutes. The incident is stated to have taken place in market place and none of the independent witnesses have been associated by the Investigating Agency or examined by the prosecution. As per the case of the prosecution, at the time of occurrence of the incident Balak Ram, Mehar Singh and Ramesh Chand were present and had witnessed the same. Shri Balak Ram and Mehar Singh have not even associated by the police or examined by the prosecution. Gurbax (PW-4) is the brother of

PW-1 and was not cited as a witness in the case. As per PW-1, the incident took place at about 6.30 in the evening of 7.7.1998, whereas matter was reported to the police and the FIR registered on 8.7.1998 at about 12.30 A.M. There is no explanation on record as to why there is delay in reporting the matter. There is difference in the version of PW-1 and PW-4 with regard to the beatings given by the accused to PW-1. As per PW-4, the accused had slapped the complainant on his head, whereas as per PW-1 the accused had given beatings to him with fist and kicks on his body and more particularly on his ear. There is variation in their statement. Further there is no evidence to support the case of the prosecution that the accused had abused the complainant. As per the medical evidence on record no external injury has been found on the body of the injured- complainant. This only belies the prosecution story that blows with fist and kicks were given by the accused.

The Court below has appreciated the evidence while arriving at its conclusion. I see no perversity in the same. The appeal is accordingly dismissed.

Bail bonds are discharged.

(Sanjay Karol),
Judge.

October 25, 2007(TM)